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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

LOCAL NO. 11 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO, *Petitioner,*

v.

HENRY HUGHES, *Respondent*

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Third Circuit

NATHAN DUFF,
280 Hobart Street,
Perth Amboy, New Jersey

MOZART G. RATNER,
1411 K Street, N. W.,
Washington 5, D. C.

Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the United States Court of Appeals for the Third Circuit

Local No. 11 of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, herein called Local 11, prays that a writ of certiorari issue to review the opinion and judgment (A-5-21, *infra*), of the United States Court of Appeals for the Third Circuit, both entered in the above case on March 9, 1961.

OPINIONS BELOW

The opinion of the district court (A-1) is reported at 183 F. Supp. 552. The opinion of the Court of Appeals (A-5), is reported at 287 F. 2d 810.

QUESTION PRESENTED

Whether the Labor-Management Reporting and Disclosure Act of 1959 creates federal question jurisdiction over the complaint of an applicant for membership in a local labor organization who alleges that under its governing constitution and by-laws he is entitled to admission but has been arbitrarily barred.

STATUTE INVOLVED

Section 3 (o) of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 520, 29 U.S.C. § 402 (o) (hereinafter called the 1959 Act), which the court below deemed controlling, reads as follows:

> "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

Other relevant provisions of the Act are set forth in the Statute Appendix, pp. SA-1, SA-2, *infra*.

STATEMENT

On December 31, 1959, (P. App. 1a)[1] plaintiff Hughes, invoking Section 102 of the 1959 Act, (P. App. 2a) filed in the district court for the district of New

[1] "P. App." references are to the appendix to the brief of Plaintiff-Appellant in the court below. "App." references are to the appendix to this petition.

Jersey a complaint alleging in substance that under the constitution of International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, he is entitled to be admitted to membership in Local 11, that he applied to Local 11 for membership but was rejected and the International refused to intervene. He prayed for an order requiring defendant Local 11 "to grant him membership in accordance with the provisions of the constitution of the said International" (P. App. 3a). Local 11 filed an answer in which the material allegations were denied (P. App. 3a-7a) and a motion to dismiss for lack of jurisdiction (P. App. 9a). Hughes filed affidavits in response (P. App. 10a-19a) which, read with the complaint, show as follows:

In 1951 Hughes moved from Scranton, Pennsylvania, within the jurisdiction of Local 489, to Mine Hill, New Jersey, within the jurisdiction of Local 11 (App. A-6; P. App. 2a). At all times thereafter Hughes worked in the territory of Local 11 "on an informal permit * * * evidenced * * * only by a brass pin" issued to him by Local 11 (P. App. 18a; App. A-6). Throughout this period Hughes maintained his membership in good standing in Local 489 and paid his dues to it. (P. App. 14a, 2a).[2] On or about

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[2] The erroneous finding in the opinion below (App. A-6) that Hughes "paid his dues to Local 11" apparently stems from the ambiguity of the statement in Hughes' supplemental affidavit (P. App. 18a), that he "paid all the fees required by the said constitution and by the local union in order to continue my said permit." The International constitution (Art. XVIII, Sec. 32, P. App. 17a) provides that members working on a permit shall pay "local dues (not local assessments) and International assessments, in the local union of his membership and local assessments

October 3, 1957, he asked Local 11 to execute a formal permit of the kind "set forth in the International constitution" (P. App. 18a, App. A-6) which is necessary to initiate transfer of his membership from Local 489 to Local 11 (P. App. 18a). Local 11 refused (P. App. 18a, 3a). Hughes appealed for aid and information to the International which advised him that "transfer was entirely a matter of local jurisdiction in accordance with the requirements of the constitution of the International." (P. App. 2a; App. A-6) On numerous occasions he attempted to surrender to Local 11 his membership book, with stamps indicating his good standing in Local 489 (P. App. 18a; App. A-6). Local 11 refused to accept the book or process his application for transfer (P. App. 18a-19a). On June 25, 1959, Hughes was advised by the Executive Board of Local 11 that to grant his request "would open the door to too many transfers" (P. App. 12a).

To support the allegation that Local 11 "is required * * * to permit [Hughes] to become a member" (P. App. 2a), the affidavits set out a number of provisions of the International constitution dealing with issuance by the local union into whose territory a member of another local moves of official permits pending transfer and transfers (P. App. 10a-11a, 15a-18a). See also App. A 11-A 12. Hughes said: "As I read the above quoted and described provisions * * * they require * * * that I work * * * under a Permit Pending Transfer from my old local union to the defendant. * * * The

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(not local dues) to the local issuing permit." A letter from Local 489 to Hughes acknowledging receipt of his dues covering the months of February to May, 1960 (P. App. 14a), shows unequivocally that Hughes paid dues to Local 489, not Local 11. The record does not show that Local 11 ever accepted a penny from Hughes.

application for the transfer must be executed by or on behalf of the defendant union." (P. App. 18a) Article VIII, Sec. 32, of the International constitution, quoted by Hughes (P. App. 16a) provides:

> It is mandatory upon local unions' Secretaries, Business Agents or other proper officers to issue permits to any member of the International Association, whose dues are paid for the current month, providing that such member meets all reasonable local requirements and regulations pertaining to employment.

However, a subsequent paragraph of the same section, also quoted (*ibid.*), provides:

> Local unions may, with the consent of the General Executive Board, where conditions justify, provide other methods of placing members of other local unions on work in their respective jurisdictions.

The district court granted Local 11's motion to dismiss on the ground that a right derived from an International constitution to transfer from one local union to another is not comprehended by Section 101 (a) (1) of the Act and violation of that right therefore does not give rise to a cause of action cognizable under Section 102 (App. A 2-A 3). It held that Section 102 applies "only to such persons as are or have been members of the specific organization" (App. A-3), in this case Local 11.

The court below reversed. It held, in substance, that the "words of Section 3(o), on their face" (App. A-16) extend the rights and privileges enumerated in Section 101(a)(1) to applicants who are denied membership as a result of failure to perform "ministerial acts precedent to formal admission and recognition" (App.

A-11) and that, to effectuate this extension, federal courts must determine whether an applicant has "fulfilled the requirements for membership." (App. A-11) Accordingly, it remanded the case for determination whether under the International constitution and by-laws Local 11 was required to admit Hughes; whether Hughes had actually been deprived of any of the rights and privileges enumerated in Section 101(a)(1) and whether he had exhausted or should be required to exhaust any of Local 11's internal hearing procedures as a condition for seeking relief. (App. A 19-A 20).

The court noted, however, that Section 101 (a) (1) protects only those rights and privileges of membership which it enumerates; that "any other membership rights secured * * * by the union's constitution and by laws * * * are enforceable only under state law * * *," and that consequently the federal court cannot require a labor organization to make an applicant a "member" for any purpose, or in any sense, other than to safeguard rights defined in Section 101. (App. A-18)

REASONS FOR GRANTING THE WRIT

As the court below stated (A-19): "This case is one of great importance not only to labor and to unions but also to the public at large." At stake is federal jurisdiction over the admission practices of all unions, a field which, it has heretofore been thought, Congress deliberately declined to enter. The court below finds judicial entry required by a single phrase in a bill about which Solicitor General Cox said: "the work was done late at night or in little knots on the Senate floor. The draftsmanship left much to be desired, perhaps because of the haste and stress, the number of participants, and the priority of tactical acceptability over nicety of

expression, * * * these sections never received the careful technical review and clarification which comes from scrutiny by a congressional committee and its legislative staff." Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 820, 833.[3]

The court below relied entirely on "the plain meaning of the words as they have been enacted by Congress". But "the so-called 'plain meaning rule' * * * has not dominated our decisions. The contrary doctrine has prevailed." *Association of Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U.S. 437, 444. "A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy 'excepting as a different purpose is plainly shown.' " *United States* v. *American Trucking Association*, 310 U.S. 534, 544.

A. In *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 620, this Court held that the proviso to Section 8(b)(1) of the Taft-Hartley Act, 61 Stat. 141, 29 U.S.C. § 158(b)(1), which reserves to labor organizations the right to prescribe their own "rules with respect to acquisition or retention of membership therein", had the effect of preserving the "traditional jurisdiction" of the states "to determine and enforce the rights of union membership" created by union constitutions and by-laws. A suit by "an unjustly ousted member" to vindicate "breach of a contract governing the relations between [the member] and his unions" (356 U.S., at 620, 621-622) was held to concern a subject of state rather than federal regula-

[3] Cf. Sherman, *The Individual Member and the Union*, 54 Northwestern L. Rev. 803, 806-807, 816.

tion. That such proceedings "deal with arbitrariness and misconduct vis-a-vis the individual members and the union" (*Id.*, at 622) is precisely what distinguished them from matters of federal concern.

The legislative history of the Section 8(b)(1) proviso shows that Congress enacted it to assure that the Act would not interfere in any way with union policies or practices in the field of admission to or expulsion from membership.[4] *Steele* v. *Louisville & Nashville Railroad Company* (1944), 323 U.S. 192, 204: "the statute does not deny to * * * a bargaining labor organization the right to determine eligibility to its membership * * *"; *Oliphant* v. *Brotherhood of Locomotive Engineers*, 6 Cir., 262 F. 2d 359, 362, affirming 156 F. Supp. 89, 93, cert. denied, 359 U.S. 935; *Ross* v. *Ebert*, 275 Wis. 523, 82 N.W. 2d 315.

The substantive provisions of the 1959 Act regulate suspension and expulsion from membership in two

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[4] In debate on the proviso Senator Ball declared: "It was never the intention of the sponsors * * * to interfere with the internal affairs or organization of unions." Senator Pepper said that he had understood Senator Taft to say that under the union shop provisions of the bill "anyone who presented himself and was qualified in other respects for membership, and who complied with the usual conditions for membership, such as the payment of dues, and so forth, would be entitled to membership." Senator Taft replied: "I did not say that. * * * The union could refuse the man admission to the union, or expel him from the union; but if he were willing to enter the union and pay the same dues as other members of the union, he could not be fired from his job because the union refused to take him." Immediately thereafter Senator Ball in a colloquy with Senator Pepper confirmed that "the union can admit to membership anyone it wishes to admit, and decline to admit anyone it does not wish to accept"; it can "expel [a member] from the union at any time it wishes to do so, and for any reason." 2 Leg. Hist. LMRA (Govt. Print. Off., 1948) 1141-1142.

respects. A member may not be suspended or expelled for exercising any rights guaranteed by the Act (Section 609), or for any reason unless he is served with written charges, given a reasonable time to prepare his defense and afforded a full and fair hearing (Section 101(a)(5)). In contrast, admission to membership is nowhere mentioned.

The definition of "member" was introduced into the legislation on April 22, 1959, as part of Senator McClellan's "Bill of Rights" amendment to S. 1555, as reported. 105 Cong. Rec. 5810, 2 Leg. Hist. 1192.[5] The definition originally read:

> 'Member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled *or tendered* the *lawful* requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution, by laws, or other governing charter of such organization. [Emphasis supplied.]

The Kuchel Substitute for the McClellan amendment was offered two days later and adopted with Senator McClellan's support. 105 Cong. Rec. 5997-6030, 2 Leg. Hist. 1220-1239. Responsible commentators associated with the development of the Kuchel Substitute report that the definition of "member" was "not changed through inadvertence";[6] that the definition escaped

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[5] The designation "Leg. Hist." refers to the Legislative History of the Labor Management Reporting and Disclosure Act of 1959 (Govt. Print. Off. 1959).

[6] Sherman, *The Individual Member and the Union*, 54 Northwestern L. Rev. 803, 816 (1960).

attention because "it was not included in Title I but was inserted as a part of * * * Title VI," and remained "undetected in the confusion attending conclusion of debate in the Senate * * *."[7]

The words italicized above were vigorously criticized before the House Committee by President A. J. Hayes of the International Association of Machinists.[8] During his testimony on June 2, 1959, the following colloquy occurred, pp. 1406-1407:

> *Mr. Dent:* I have one observation. On page 24 you speak about Section 601 (n). I might just read one line:
>
> This subsection defines a member or member in good standing as including not only those who have fulfilled but any person who has tendered the lawful requirements for membership.
>
> I want Mr. Griffin to hear this. I think it is very important.
>
> If this same proviso were applicable to every profession in the United States the proviso where a person not only has fulfilled his membership requirements, but any person who has tendered the lawful requirements for membership, every law in the United States and every rule of every licensing body would be subject to being declared null and void, because under our laws a gentleman or young man who has passed his requirements in a college or institution or university teaching medicine, teaching law, teaching professions of engineering, the profession of pharmacy, any of the

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[7] Hickey, *The Bill of Rights of Union Members*, 48 Georgetown L. J., 226, 249-250 (1959).

[8] *Ibid*, at p. 250; Hearings before the Joint Subcommittee of the Committee on Education and Labor, on H. R. 3540, 86th Cong., 1st Sess., pp. 1397-1398.

> professions under this provision, if it were applicable to every other association in the United States as well as to union members, every association would have to declare null and void its extra-provisos which give to a handful of three men or five the right to say whether a man can work at the trade or at the profession that he had paid his money out to learn.
>
> *Mr. Griffin:* Let me say briefly that I agree with you as to the particular provision. I think it is wrong.

Accordingly, the House Committee bill which was introduced on July 23, 1959, "revised the Senate provision to eliminate the objectionable language."[9] The revised definition, Section 3(o) of the Committee Bill, H. R. 8342, 1 Leg. Hist., p. 695, with the italicized words stricken, was adopted in the Landrum Griffin Bill, introduced on July 27, 1959, H. R. 8400, 2 Leg. Hist. 1527, and thereafter enacted.

On August 12, 1959, Congressman Powell introduced his amendment, which would have made it unlawful for any labor organization "to refuse membership * * * on the grounds of race, religion, color, sex, or national origin." 105 Cong. Rec. 14388, 2 Leg. Hist. 1648. Both sponsors of the bill opposed it. 105 Cong. Rec. 14389, 2 Leg. Hist. 1649. Congressman Landrum said:

> We do not seek in this legislation, in no way, no shape, no guise, to tell the labor unions of this country whom they shall admit to their unions. No part of this legislation attempts to do that. * * * This law is designed only to say that, if he is a member of a union, he shall have equal rights. * * *
>
> Moreover, there is a provision now in the Taft-

[9] Hickey, *op. cit., supra*, n. 7, p. 250.

> Hartley Act, section 8(b)(1)(A), which * * * [w]e do not here seek to repeal * * *. We do not here withdraw or take away from the unions the right to fix their own rules for the acquisition or retention of membership. We simply say that if you bring them into the union, if you charge dues, if you cause him to do this in order to work at his trade, in order to make a living, then within that local he shall have equal rights.

Congressman Griffin said (*Id.*) that the bill:

> does not touch or deal in any way with the admission to, or retention of, membership in a union. There is a proviso in the Taft-Hartley Act which union leaders and the union members want preserved. I refer to a proviso to section 8(b) which reserves to unions the right to prescribe rules and regulations for the admission and retention of membership. I personally think that in some instances this privilege has been abused by some unions. However, our committee did not go into that matter in its hearings. The subject of the amendment is outside of the scope of the legislation and the hearings that were held on labor reform legislation.

The amendment was defeated on a teller vote, 215 noes, 160 ayes. 105 Cong. Rec. 14391, 2 Leg. Hist. 1651.

Solicitor General Cox has described the effect of this history as follows:[10]

> The most glaring defect in the common-law rights of employees *vis-a-vis* their representative for the purpose of collective bargaining was the want of legal remedies for unfair or discriminatory denials of membership. It is a black-letter rule that no

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[10] *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 820, 841-842.

> one has a legally-protected right to become a member of a voluntary association. Consequently, a union may exclude an applicant for any reason, good or bad, or for no reason. It may even discriminate upon grounds of race, color, sex, or religion.
>
> * * *
>
> The LMRDA "bill of rights" does nothing to correct the evil.

Professor Aaron has said:[11]

> The outstanding defect in the act is one of omission: The so-called bill of rights is silent on the one subject—the right to join a union and to share equally the benefits of membership—that gives meaning to all the other rights protected in Title I.

Speaking of the problem created by the phrase "fulfilled the requirements for membership" in Section 3(o), he says:[12]

> Most unions that still bar or otherwise restrict membership of Negroes or other minority groups have eliminated the formal statement of such restrictions from their constitutions, bylaws, and rituals. Would a Negro who meets a labor organization's formal requirements for membership but who is nevertheless denied admission for some other reason, or for no reason, be considered a "member" within the meaning of section 101 (a) (1)? If congressional intent is the sole criterion of interpretation, the answer is negative * * *.

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[11] *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 860 (1960).

[12] *Ibid.*, p. 863

Another commentator has said:[13]

> Unions seek job security for their members in many ways. One technique used by some unions is to restrict the number of workers it will admit to membership. A restrictive admission policy may limit the number of qualified workers, thus insuring jobs for members. It may create a labor shortage which may enhance the value of their services. It insures that the existing members will control the collective bargaining policies of the union which represents them. If the union can control the number of men in the labor market and the order in which employment opportunities are distributed, jobs will be distributed to favor the more entrenched members of the union.
> Thus, the justification for restricting admission to union membership lies in the economic self-interest of the workers who are already in the unions. This justification is, in the American legal system, entitled to considerable weight. * * *
>
> The common law principle allowed the union to exclude any person from membership without judicial restraint.
>
> * * * *
>
> Congress has never overtly restricted the power of a union to select its members.

Professor Summers concludes that Section 101(a)(1) "outlaws all forms of second-class membership * * * although it does not compel admission of those wholly excluded."[14] Another writer has said:

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[13] Blumrosen, *Legal Protection Against Exclusion from Union Activities*, 22 Ohio S. L. J. 21, 27 (1961).

[14] *The Impact of Landrum-Griffin in State Courts*, Thirteenth Annual Conference on Labor, New York University (1960), 333, 355.

"An applicant for membership, therefore, has no standing to sue with respect to section 101(a)(1) or with respect to any other section of the Bill of Rights Title."[15]

The object of Section 101(a)(1), as its very title shows, is to guarantee equality of rights as between those who are members of the organization, not to outlaw work permit systems or regulate transfers of membership between local unions. As the court below concedes (App. A-15), the legislative history of the entire Act makes plain that it was not intended to prevent a labor organization from adopting and enforcing an arbitrary, discriminatory, restrictive or unlawful admission policy. Viewed as a whole, the Act leaves no room for the distinction drawn by the court below between rejections which are authorized by a union's governing constitution and by-laws and those which are not. There is simply no support for the theory that the phrase "fulfilled the requirements for membership" was retained in Section 3(o) rather than replaced by a phrase such as "who have been formally admitted to membership" because Congress wanted the federal government to decide whether or not denial of admission was authorized under a union's constitution and by-laws. Nothing in the legislative history suggests that apart from the question whether denial of admission was fair, anyone in Congress was concerned with whether it was authorized. "Congress considered the union constitution as the main core of state law to be preserved and found no fault in state court interpretation of it."[16]

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[15] Sherman, *op. cit., supra*, note 6, pp. 816-817.

[16] Summers, *Preemption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio S. L. J. 119, 144 (1961).

There is, accordingly, no basis for assuming that Congress intended to burden federal courts with such questions of interpretation as lurk in the instant case, namely, whether the provision authorizing local unions to "provide other methods of placing members of other local unions on work in their respective jurisdictions" is compatible with the claim that the constitution makes the formal transfer system mandatory, p. 5, *supra*. Cf. *Association of Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U.S. 437, 460-461. If so significant a departure from the policy of Section 8(b)(1)(A) as defined in *Gonzales* had been intended it is reasonable to assume that someone would have called attention to it. Intention to preserve that policy with respect to admissions is too plain to permit any explanation other than that Congress did not consider the possibility that the phrase "fulfilled the requirements of membership," read outside the context of the word "tendered" to which it was originally juxtaposed, could be construed to import an "external standard" superseding the union's action in granting or withholding admission.

Viewed in the context of their history, rather than on their face alone, the words do not carry the implication attached to them by the court below. As the Dent-Griffin colloquy, pp. 10-11, *supra*, which the court below unfortunately overlooked, clearly shows, Congress understood the distinction between "fulfilled" and "tendered" to be between acceptance and non-acceptance of a qualified applicant. Deletion of the "tendered" alternative did not change the sense or meaning of the remaining alternative, namely, that the applicant's "tender" shall have been accepted by the organization. The language itself compels this con-

clusion. If, as no one denies, payment of dues is a requirement of membership, one like Hughes, whose "tender" of dues, has been rejected by the organization (*supra*, pp. 3-4), cannot have "fulfilled the requirements" of membership in it.[17]

B. Unless Congress intended the federal courts to fashion federal law to govern the question whether a labor organization's constitution and by-laws compel it to accept an applicant's tender, the federal courts have no independent federal question jurisdiction over it. Cf. the *Westinghouse* case, *supra*, 348 U.S., at 442, 461, with *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456-457. *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 359 and *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 249, upon which the court below relied (App. A-9), do not suggest the contrary. Neither involved exercise of federal jurisdiction in a field—admission to union membership—which Congress declined to enter.

To hold that since Title I rights are dependent upon membership an applicant claiming wrongful rejection must resort to a state court to vindicate his right to be admitted before being entitled to assert a claim that his Title I rights have been infringed is alone consistent with the pattern of federal legislation (*Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30, 40; *United States* v. *Hutcheson*, 312 U.S. 219,

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[17] That Local 11 gave Hughes a pin which served as a "work permit", and may have allowed him to attend meetings (App. A-7), cannot tend to prove that it admitted him to any kind of membership, for those are precisely the obligations which the law requires a union to fulfil vis-a-vis non-members. See p. 8 and note 4, *supra*.

231) which leaves questions of wrongful denial of admission entirely to state law.[18]

It is also the only course consistent with Section 103, in which Congress specifically provided that nothing in Title I "shall limit the rights and remedies of any member of a labor organization under any state * * * law or before any court or other tribunal, or under the constitution and by-laws of any labor organization." Congress here distinguished questions of interpretation and application of union constitutions and by-laws from questions of enforcement of Title I rights. It clearly contemplated that the former questions would be governed by state law as applied by state courts. Now to hold that federal courts are authorized to determine whether a union's admission requirements have been fulfilled for the purpose of determining whether membership rights conferred by Section 101(a)(1) have been denied would threaten the policy of Section 103. Must federal courts apply state law in determining whether the applicant has "fulfilled the requirements of membership?" If so, what positive advantage in the effectuation of Title I rights is derived from empowering them to adjudicate the question? On the other hand, if federal courts are to fashion federal law to effectuate the policy of Section 3(o) and Title I (*Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456), the most difficult of preemption and removal problems would arise. See Summers, *op. cit., supra*, note 16, p. 15, at pp. 144-152; cf. *Charles Doud Box, Inc.* v. *John F. Courtney*, No. 641, October Term, 1960, certiorari granted, 365 U.S. 809; *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v.

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[18] Cox, *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 620.

Lucas Flour Company, No. 716, October Term 1960, certiorari granted, 365 U.S. 868.

To require applicants who complain of total rejection to resort to state rather than federal courts avoids these difficulties while fully effectuating the policy of Title I. If the state court finds that the applicant is entitled to admission under the constitution and by-laws of the organization it is empowered to grant full relief, covering all incidents of membership, not merely those protected by Section 101(a)(1). On the other hand, as the court below conceded, the federal court, being powerless to enter a decree compelling admission to membership as such, could not grant complete relief, except on a pendant jurisdiction theory. But to invoke that theory would in effect write into Title I a right to be admitted to full membership, which Congress admittedly refused to do. To reject that theory leaves the successful federal court suitor to sue in the state court to attain other attributes and status of membership. So incongruous a patchwork scheme may not be attributed to Congress.

To allow the decision below to stand would open the flood gates to a vast volume of litigation which has heretofore been handled by state courts. The manifest public importance of the question requires its early resolution by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

NATHAN DUFF,
280 Hobart Street,
Perth Amboy, New Jersey

MOZART G. RATNER,
1411 K Street, N. W.,
Washington 5, D. C.

Attorneys for Petitioner

Dated: July, 1961

STATUTE APPENDIX

Sec. 3. For the purposes of titles I, II, III, IV, V (except section 505), and VI of this Act—

(i) "Labor organization" * * * engaged in an industry affecting commerce * * * includes any organization * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, * * *

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(2) * * * is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph * * * (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization.

Sec. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with

written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Sec. 103. Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

Sec. 604. Nothing in this Act shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes.

Sec. 609. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section.

APPENDIX

Opinion of Meaney, U. S. D. J., on Motion to Dismiss Complaint (May 13, 1960)

MEANEY, District Judge.

Plaintiff has been for some time, and at present is, a member of Local 489 of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, of Scranton, Pa. In 1951 he moved into the jurisdiction of the defendant Local. At the time of moving from Scranton, Pa. to Mine Hill, N. J. plaintiff was a member in good standing in Local 489. In 1957, in conformity with provisions of the constitution of the International Union plaintiff applied for a transfer from Local 489 to Local 11, following the course of procedure outlined in the constitution of the International. The defendant Local refused to issue the necessary transfer though Local 489 has indicated its willingness to forward the transfer on receipt from defendant Local of a form certifying fulfillment of certain transfer requirements. Plaintiff thereafter applied to the International for the purpose of securing the aid of that body in bringing about his transfer. No action has been taken by the International, and plaintiff seeks the assistance of this court, asking for what is in effect mandamus directed to the defendant Local directing it to issue the documents necessary to effectuate his transfer to such Local.

Defendant moves to dismiss this action on the grounds of lack of diversity of citizenship, lack of involvement of jurisdictional amount and absence of any federal question. Admittedly diversity of citizenship and jurisdictional amount are lacking.

Plaintiff basis his right to institute his action under the provisions of the Labor-Management Reporting and Disclosure Act of 1959, more particularly under Section 3 (o),

Section 101 (a) (1) and Section 102 thereof. (29 U.S.C. Sections 402 (o), 411 (a) (1) and 412).

Section 3 (o) defines as a member or member in good standing "any person who has fulfilled the requirements for membership in such organization" and who has neither resigned nor been properly expelled or suspended.

Section 101 (a) (1) guarantees equal rights of such members as follows:

> "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

Section 102 confers the right upon any person, whose rights under the Act have been infringed, to bring civil action in a district court of the United States for appropriate relief, such action to be brought where the violation occurred or where the principal office of the labor organization is located.

Baldly stated, the question of jurisdiction in this suit rests upon whether Congress contemplated, as a right to be enforced under the terms of the Labor-Management Reporting and Disclosure Act of 1959, transfer from one local to another. Is this a matter included in Section 101 (a) (1) of the said Act, violation of which would authorize suit under Section 102 thereof?

Section 101 (a) (1) in its provisions for equal rights and privileges, presumed membership in a particular labor organization, and for the purposes of this suit that would be Local No. 11. But the difficulty with which we are met is whether or not the plaintiff is a member of this Local.

Formally he is not as he is still carried on the roster of Local 489. However, he contends that he must be considered as a member of Local 11 since he has "fulfilled the requirements for membership" in that organization, as membership is defined in Section 3 (o).

It seems to this court that Section 3 (o) refers only to such persons as are or have been members of the specific organization, and has no relation to extrinsic matters such as the right to transfer to or from an organization. That right is determined by the constitution of the International and is not included in the rights specifically protected by Section 101 (a) (1) above referred to.

The International prescribes the method of transfer and provides for penalties for violation of its rules in this respect. Nowhere in the Labor-Management Reporting and Disclosure Act of 1959 is there any provision relating, except by strained construction, to transfer of a person from one local to another, as a right such as those guaranteed by Section (a) (1) of the Act. The matter of transfer is internal to the International and has nothing to do with the rights outlined in Section 101 (a) (1) except by far fetched inference.

In the construction of the Labor-Management Reporting and Disclosure Act of 1959, any limitation of existing prerogatives of a labor organization as to internal affairs must be spelled out and not left to either merely possible or whimsical inferences.

Defendant's motion granted.

Submit an order.

Order and Judgment of Dismissal

This matter having been heard in the presence of Counsel for the respective parties on Motion of the defendant for an Order dismissing the action on the ground that the Court lacks jurisdiction over the subject matter and the

Court having demonstrated in its Opinion that there was an absence of any federal question, a lack of diversity of citizenship and a lack of involvement of jurisdictional amount; therefore

It is on this 25th day of May 1960 ORDERED, for the reasons set forth in the Opinion of this Court, that the above-entitled action be, and the same hereby is, dismissed without costs.

THOMAS F. MEANEY
United States District Court Judge

Plaintiff's Notice of Appeal

TO THE CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NEWARK, NEW JERSEY:

NOTICE is hereby given that Henry Hughes, plaintiff herein, hereby appeals to the United States Court of Appeals for the Third Circuit from the order of this Court entered May 25, 1960, dismissing the complaint filed herein.

DATED: June 17, 1960.

BRACKEN AND WALSH,
Attorneys for Plaintiff,

By: JOHN J. BRACKEN,
A Partner.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,328

HENRY HUGHES, *Appellant*,

v.

LOCAL NO. 11 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO.

Appeal from the United States District Court for the District of New Jersey

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Argued December 9, 1960

Before BIGGS, *Chief Judge*, and GOODRICH and FORMAN, *Circuit Judges*

Opinion of the Court

(Filed March 9, 1961)

By BIGGS, *Chief Judge*.

This is an appeal from a judgment of the court below dismissing an action brought by the plaintiff-appellant, Hughes, against Local 11 of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, on the ground that the court did not have jurisdiction of the subject matter of the suit. The following appears from the complaint, the answer, and from affidavits filed in this case in the court below. The plaintiff is a member in good standing of the International Association of of Bridge, Structural and Ornamental Ironworkers, affili-

ated with the American Federation of Labor and the Congress of Industrial Organizations (the International). He is also a member in good standing of Local 489 of the International, located at Scranton, Pennsylvania. On or about October 1, 1951, he moved from Scranton to Mine Hill, New Jersey, which lies within the district allocated by the International to Local 11. Since that date the plaintiff has performed work within the jurisdiction of Local 11 with that Local's knowledge and consent. On or about October 3, 1957, the plaintiff requested a transfer from Local 489 to Local 11. At this time he requested the International to give him aid and information in effecting the transfer and was informed that the matter was entirely one of "local jurisdiction" to be effected, however, in accordance with the requirements of the constitution of the International. He was given an "informal permit" to work by Local 11 pending his transfer. This informal permit was evidenced by a brass pin given him by Local 11, but he was not given a formal permit of the kind set out in the constitution of the International. He has attempted to surrender his membership book showing his good standing in Local 489 to Local 11. He has paid his dues to Local 11 and has attempted to effect his transfer to that Local by appeals both to it and to the International. The Secretary of Local 11, by a letter dated June 22, 1959, directed him to appear before a meeting of the Executive Board of Local 11 to be examined as to his qualifications as a journeyman ironworker but, insofar as the present record shows, nothing has come of this. He received a letter, dated January 21, 1960, from the Business Agent of Local 489, stating, "There is no trouble at all involved in getting a transfer to another local. Simply contact Local 11 and if they accept your transfer they will contact us and I will issue the transfer card from Local 489 to Local 11." No transfer has been forthcoming despite the fact that "[P]laintiff has fulfilled all the requirements of the

[International's] constitution for transfer to [Local 11]". It is asserted that Local 11's inaction is in disregard of International's constitution by which "defendant is required to permit plaintiff to become a member of defendant. . . ." It is sufficiently pleaded that the plaintiff has no effective administrative remedy or relief available to him within the Locals or within the International. It is conceded that the plaintiff is allowed to attend the meetings of Local 11 but he cannot take any part in the meetings or vote at them.

On these facts Hughes asserted in the court below and asserts in this court that he, as a member of the International and as a person who has fulfilled all of the requirements for membership in Local 11, is being denied equal rights and privileges within Local 11 in contravention of Section 101(a)(1)[1] of the Labor-Management Reporting and Disclosure Act of 1959. The relief asked by the plaintiff is a decree granting him membership in Local 11 with all the rights and privileges incident to such membership. Local 11 contends, on the other hand, that Section 101(a) (1) only secures rights to persons who have been admitted to membership in labor organizations and that Hughes is not a member of Local 11 within the meaning of the Act. Local 11 argues that the plaintiff is attempting to gain a right of transfer into Local 11 and that the right of transfer is not secured by Section 101(a)(1) of the Act.

Local 11 moved to dismiss Hughes' complaint for lack of jurisdiction asserting that it did not set out a valid claim arising under the Act. The court below granted

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[1] Section 101(a)(1) of the Act, 29 U.S.C.A. § 411(a)(1) provides: "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

this motion reasoning that "Section 101(a)(1) in its provisions for equal rights and privileges, presumed membership in a particular labor organization, and for the purposes of this suit that would be Local No. 11. But the difficulty with which we are met is whether or not the plaintiff is a member of this Local. Formally he is not as he is still carried on the roster of Local 489. However, he contends that he must be considered as a member of Local 11 since he has 'fulfilled the requirements for membership' in that organization, as membership is defined in Section 3(o) [of the Act, 29 U.S.C.A. § 402(o)[2]].

"It seems to this court that Section 3(o) refers only to such persons as are or have been members of the specific organization, and has no relation to extrinsic matters such as the right to transfer to or from an organization. That right is determined by the constitution of the International and is not included in the rights specifically protected by Section 101(a)(1) above referred to." The court dismissed the complaint, 183 F. Supp. 552. The appeal at bar followed.

Initially, we must point out that a dismissal for lack of jurisdiction was not proper under the circumstances. Section 102 of the Act, 29 U.S.C.A. § 412,[3] provides that

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[2] Section 3(o) provides: " 'Member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization."

[3] Section 102 provides: "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

an action for appropriate relief may be brought in a United States district court by "Any person whose rights . . . have been infringed. . . ." The court below apparently read this language as granting it jurisdiction to adjudicate only valid claims arising under the Act. Under such a construction a district court could not determine that it had jurisdiction until it had judgment for the plaintiff, and a judgment for the defendant would necessarily result in a dismissal for lack of jurisdiction.

The well established practice, on the other hand, has been that the assertion of a substantial claim under a federal statute gives a United States court jurisdiction of that claim even though that court may determine ultimately that no cause of action on which relief could have been granted was alleged. See, *e.g.*, Romero v. International Terminal Operating Co., 358 U.S. 354, 359 (1959); Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 249 (1951). The language of Section 102 is not such a clear statement to the contrary to demonstrate an intention on the part of Congress to create an exception to the general and long standing practice as to the power, the jurisdiction of a United States district court to determine a controversy pending before it. We hold, therefore, that a United States district court has jurisdiction to determine the validity of any substantial claim asserted under the "Bill of Rights" subchapter of the Labor-Management Reporting and Disclosure Act of 1959 even though it may determine ultimately that the claim is not one upon which relief may be granted.

It follows that the order of the court below must be treated on this appeal as one dismissing Hughes' complaint on the ground that it does not assert a claim upon which relief can be granted. This court has held that "there is no justification for dismissing a complaint for insufficiency of statement, except where it appears to a

certainty that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim." Continental Collieries, Inc. v. Shober, 130 F. 2d 631, 635 (3 Cir. 1942).

Section 101(a)(1) of the Act, pursuant to which the plaintiff, Hughes, claims relief, secures certain equal rights and privileges to members of a labor organization within such organization. Hughes, in seeking membership in Local 11 is asking for the rights and privileges of a member of a labor organization within such labor organization. The plaintiff's allegations that he has not been recognized by Local 11 as one of its members must be deemed to be the equivalent of an assertion that he is not being accorded the equal rights and privileges within Local 11 secured to members of labor organizations by Section 101(a)(1). But this is not the critical question. The pivotal issue in the present case, as the court below clearly recognized, is whether Hughes has sufficiently alleged that he is a member of Local 11, the labor organization in which he demands equal rights and privileges. If Hughes is a member of Local 11 there can be no doubt that he is entitled within that organization to the rights secured to members by Section 101(a)(1).

In determining whether Hughes, assuming the truth of his allegations, is a "member" of Local 11 we cannot look only to the ordinary meaning of the term or solely to its meaning as derived from its context in the section but must look first to the definition of the word "member" provided by the Act. Section 3(o) states, in substance, that a "member" of a labor organization is any person who has fulfilled the requirements for membership in that organization. This definition of the term "member" does not impart to that term, as it is used in the Act, its ordinary, everyday meaning. Ordinarily, we would not conclude that every person who has fulfilled the requirements for membership in an organization is in fact a mem-

ber of that organization. Numerous examples of this could be drawn from common experience. We tend, rather, to recognize as members of an organization only those persons who have been formally admitted to membership, persons who are recognized by the organization as being members. Congress did not, however, limit the protection of Section 101(a)(1) to those persons who have been admitted to membership in a labor organization and who are recognized as members by that organization. Indeed, it provided that equal rights and privileges be secured to any person who has fulfilled the requirements of membership. Thus, the Act's protection is extended to those who are everything that members are, to those who are in substance members, despite the fact that the officials of the particular labor organization have not performed the ministerial acts precedent to formal admission and recognition.

Has the plaintiff sufficiently alleged the fulfillment of all of the requirements for membership in Local 11? He has alleged that all of the requirements for membership in Local 11 are contained in the constitution of the International and he alleges compliance with all of these requirements.[4] Moreover Hughes alleges that Local 11 is required

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[4] In support of his allegation that he has fulfilled the requirements for membership in Local 11 and his contention that Local 11 is "required" to grant him membership, the plaintiff cites and sets out by affidavit Article XVIII of the Constitution of the International, Section 30. This section provides, in pertinent part: "Transfers shall not be issued for any member of this Association unless he is shipped into the territory of a local union other than the local union of his membership by some fair employer or for a member who desires to change his residence to the jurisdiction of some one other local union, and then only to the local union in whose jurisdiction a member has fulfilled all requirements as hereinafter provided for, for a period of not less than ninety (90) days. . . ."

Section 31 of Article XVIII provides in pertinent part: "A member in good standing when coming into the jurisdicton of any local union, shall tender to the Secretary, Business Agent or proper

by the International's constitution to formally admit him to membership. These allegations must be deemed sufficient to describe Hughes as a member of Local 11 within the meaning of the Act.

Hughes' case is considerably strengthened by the fact that he alleges membership, as that term is ordinarily defined, in the International of which Local 11 is also a member. As members of the International both Local 11 and Hughes are alleged to have certain rights and duties. One of Hughes' rights, it having accrued upon his admission to membership in the International, is alleged by him

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officer of such local union, his membership book in return for which he shall be given an official permit, pending transfer. . . ."

Section 33 of Article XVIII states: "Financial Secretaries shall issue a transfer for any member fulfilling the requirements providing for their issuance upon the payment of dues and assessments, irrespective of personal debts, and must enter on the ledger page of each member under the heading of remarks on the line of the month, the date of issuing transfer for the member, together with the number of the local receiving the same. He shall enter in the same place specified, the date a member transfers into his local union and the number of the local union issuing the same."

Section 35 of Article XVIII provides: "If a member applies for a transfer, after fulfilling the requirements therefor, makes the necessary remittance, and can produce documentary proof that the remittance has been made and the transfer not issued, the transfer can be procured from International Headquarters through the local union in whose jurisdiction the member is working.

Section 37 of Article XVIII provides: "A transfer properly made out must be honored by the local union in which the member transferring has established his residence in accordance with the provisions pertaining thereto."

Section 4 of Article XVII provides: "No officer or member of our International Association or its local unions shall resort to court proceedings of any description in any matter pertaining to this Organization, its local unions or his membership until all remedies provided for within our International Association and local laws have been fully exhausted. Violations of this section shall be sufficient cause for expulsion from membership in this International Association and its local unions."

to be an absolute right of transfer upon the performance by him of certain acts, all of which he has allegedly performed. One of the obligations allegedly imposed on Local 11 by the constitution of the International is to recognize formally as one of its members any member of the International who has fulfilled the requirements for transfer as set forth in the International's constitution. It can therefore be argued that a contingent membership relationship between Hughes and Local 11 has persisted during Hughes' membership in the International and that the happening of the contingencies enumerated in the constitution of the International automatically made Hughes a member of Local 11 in every sense of the word. Taking this view of the relationship between Hughes and Local 11 it would seem that the denial by Local 11 of Hughes' application for transfer is, in effect, the denial to a member of his vested rights of membership. Moreover, the alleged fact that the constitution of the International sets forth each and every requirement for transfer is, in effect, an allegation that Local 11 has no discretionary power to refuse membership to persons fulfilling the constitutional requirements. Thus, this case may be distinguished from the ordinary case of an application for membership in a voluntary association on the ground that there was not in this case a reservation of power by the organization to refuse membership, in its discretion, to those who have fulfilled its standard membership requirements.

Local 11 has asserted vigorously that the legislative history of the Act is contrary to the result which we now reach. In support of this contention our attention is called to statements made on the floor of the House that indicate that the managers of the bill which ultimately prevailed, H.R. 8400, the Landrum-Griffin Bill, did not intend that the bill impair the rights of labor organizations to prescribe their own rules with respect to the requirements for membership. These statements were made during the debate on the rejected Powell

amendment which, had it passed, would have forbidden labor organizations to "refuse membership to any person on the grounds of race, religion, color, sex or national origin. . . ."[5] In opposition to this amendment, Representative Landrum, one of the co-sponsors of the Act, made the following remarks at 105 Cong. Rec., 86th Cong., 1st Sess., 15722 (1959): "I think the membership should be completely informed as to what we are doing here. We do not seek in this legislation, in no way, no shape, no guise, to tell labor unions of this country whom they shall admit to their unions. No part of this legislation attempts to do that. I would direct your attention to a careful reading of section 101(a) of the amendment which I have proposed, which says this: 'Every member of a labor organization shall have equal rights within that organization,' and then it enumerates the things: to nominate candidates and to vote in elections or referendums . . . This law is designed only to say that, if he is a member of a union, he shall have equal rights . . . Moreover, there is a provision now in the Taft-Hartley Act, section 8(b)(1)(A), which says this: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition and retention of membership therein. We do not here seek to repeal that. We do not here withdraw or take away from the unions the right to fix their own rules for the acquisition or retention of membership. We simply say that if you bring them into the union, if you charge dues, if you cause them to do this in order to work at his trade, in order to make a living, then within that local he shall have equal rights. . . ."

The other manager of the legislation, Representative Griffin, made the following statement, 105 Cong. Rec.,

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[5] The House, having resolved itself into the Committee of the Whole, rejected the Powell Amendment by a 215 to 160 vote. 105 Cong. Rec. 15,724 (1959).

pages 15722-23: "The labor reform legislation before the House at this time is directed at the regulation of the internal affairs of unions. It does not touch or deal in any way with the admission to, or retention of, membership in a union. There is a proviso in the Taft-Hartley Act which union leaders and the union members want preserved. I refer to a proviso to section 8(b) which reserves to unions the right to prescribe rules and regulations for the admission and retention of membership. I personally think that in some instances this privilege has been abused by some unions. However, our committee did not go into that matter in its hearings."

There can be no doubt that the legislative history of the Act tends to support the proposition that nothing in the Act, Section 3(o) included, was intended to dictate, in any manner, the requirements that a labor organization might lay down with respect to the acquisition of membership. It should be apparent, however, that nothing contained in this opinion can be construed as impairing the right of a labor organization to set up any requirements it wishes with respect to the acquisition of membership. We hold only that where a person has fulfilled all of the requirements for membership actually prescribed by a labor organization he is a member as defined by Section 3(o).

There is another aspect of the legislative history of Section 3(o) not relied upon by Local 11, but which, nevertheless, must be commented upon. Section 601(n) of S.1555 the Kennedy Bill as modified by the so-called "Kuchel substitute", which passed the Senate on April 25, 1959, provided: " 'Member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled or tendered the lawful requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after

appropriate proceedings consistent with lawful provisions of the constitution, bylaws, or other governing charter of such organization." Both H.R. 8342, the so-called "committee" or Elliott Bill, and H.R. 8400, the Landrum-Griffin Bill, which finally in substance, passed both houses contained definitions of "member" identical with present Section 3(o). The conference committee adopted the House definitions in all major respects thus deleting the phrase, "or tendered the lawful requirements for membership" contained in the Senate bill. See Conference Report to accompany S. 1555, reprinted in full at 105 Cong. Rec. 18,124-27 (1959). No reason was given by the committee for this specific change. Nor has any other discussion on the matter been recorded so far as we can ascertain.

There can be no doubt that if the Act, as finally passed, defined "member" as did the Senate bill, Hughes would qualify as a member of Local 11. He clearly alleges that he has *tendered* the lawful requirements for membership in that labor organization. It does not follow, however, that the deletion of that phrase by the conference committee means that Congress did not intend a person in Hughes' position to be deemed a "member" within the meaning of the Act. In construing a statute a court should first look to the plain meaning of the words as they have been actually enacted by Congress. The words of Section 3(o), on their face, define as a member anyone who has fulfilled all of the requirements of membership. It does not say that a member is one who has been formally admitted to membership. Nor does it say that a member is anyone who has been recognized by a labor organization to be a member. The actual words of the statute show plainly that Congress intended to apply some external standard in defining "member" for the purposes of the Act. While it clearly did not intend to dictate the requirements that a labor organization might impose for membership it said very clearly that when all of those requirements have been met by a person that person is a "member".

Second, an examination of the debates on the floors of both Houses of Congress and a reading of the pertinent committee reports is not enlightening on the reason for the change in conference. This fact compels us to give little weight to the change in applying Section 3(o) to this case. A number of reasons for the change can be suggested. For example, the objection may have been to the word "lawful" which connotes an intent to have the courts strike down requirements for membership which are deemed to be against public policy. Or, the phrase may, in the absence of the word "lawful", have been thought to have been surplusage. Another possibility is that no great attention was paid to Section 3(o) in conference since it was adopted as a part of a general compromise consisting in part of a decision to adopt the House's definitions. This latter view is reinforced by the fact that the House definitions were approved almost without change. In view of all the circumstances we would not be justified in straining the language of the statute as enacted by Congress so as to give it a meaning other than that apparent on its face. We hold, therefore, that Hughes, as a person who has fulfilled the requirements for membership within Local 11, as specified in the constitution of the International to which both Hughes and Local 11 are subject, is a member of Local 11 within the meaning of Section 3(o) and Subchapter II of the Act.

One other issue is presented immediately for our consideration, *viz.*, the extent of the relief to which Hughes is entitled if the allegations of his complaint are borne out. Hughes has asked that he be granted full membership in Local 11. The defendant points out, however, that the right to transfer is not specifically enumerated in Section 101(a)(1), and that Section 101(a)(1) only enumerates some of the rights and privileges to which a member of a labor organization is normally entitled. On its face, Section 101(a)(1) purports to enumerate all of the equal rights and privileges which

it secures to members of labor organizations. These rights and privileges are "to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings . . . ." Since Hughes is a "member" of Local 11 within the meaning of the Act, he is entitled to the rights specified. He is also entitled to all other rights accorded to a union member under the Act. But there is no warrant in the statute for granting a member of a labor organization any other membership rights secured to him by the union's constitution and by-laws which are enforceable only under state law in a suit such as that at bar.[6] If, therefore, it is determined on remand that Hughes is entitled to relief, insofar as it is predicated on the Act, such relief must be limited to that appropriate to secure to Hughes the equal rights and privileges guaranteed by Section 101(a)(1) and other provisions of the Act.[7]

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[6] Hughes has not asserted pendent jurisdiction of any causes of action arising under state law.

[7] This conclusion, based on the words of the statute, is consistent with the legislative history of Section 101(a)(1). H.R. 8342 (The "Committee" or "Elliott" Bill) contained the following "Bill of Rights" provision:

"Every member of a labor organization shall be accorded, subject to reasonable qualifications uniformly imposed, *all the rights and privileges pertaining to membership under the constituton and bylaws of such labor organization, including* the right to participate in determining the policies of such labor organization, to attend membership meetings, and to vote in any election or referendum conducted by such labor organization." (Emphasis supplied.)

S. 1555 as modified by the "McClellan Amendment" of April 22, 1959 (see 105 Cong. Rec. 6475) provided: "Every member of a labor organization engaged in an industry affecting commerce shall have equal rights and privileges within such organization, *including identical voting rights and equal protection of its rules and regulations.*" (Emphasis supplied.)

S. 1555 as finally passed by the Senate and H.R. 8400, as finally passed by the House, both contained a provision substantially

This case is one of great importance not only to labor and to unions but also to the public at large. The court's inquiry into its many facets must be full and complete. It cannot be decided properly on a barebones record. There must be findings of fact and conclusions of law based on a full record.

At least three issues must be determined on remand. First, the court must inquire into the requirements for membership in Local 11[8] and determine whether Hughes has met all of those requirements.

The second issue to be determined on remand is primarily one of fact, whether the plaintiff was deprived of his rights to participate in the affairs of Local 11. It would seem that he has perhaps been deprived of these rights since it appears that he has not been allowed to exercise the rights and privileges of membership but in view of the present limited development of the record the vital issues are not really in focus.

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identical with present Section 101(a)(1). The present language, unlike that in the earlier proposals, does not permit of a construction that would secure to members of labor organizations rights in addition to those specifically set forth.

[8] Hughes filed two affidavits in the court below setting out what he regards to be the pertinent provisions of the International's constitution. Those provisions are set out in note 4, *supra*. This was done apparently to bolster his allegations that he has fulfilled all of the requirements of the constitution relating to transfers and that Local 11 is bound by the constitution to give him the rights and privileges of a member. The determination of the validity of these allegations will obviously involve the interpretation and construction of the constitution. It may also require an examination of the charter of Local 11 and of other evidence pertaining to the various relationships between the International, its member locals and its individual members. We shall not attempt to define these relationships on this appeal because of the possibility that we may not have all of the relevant evidence and in view of the fact that we have not had the benefit of briefs, argument, and of findings by the court below on these points.

A third issue which must be determined on remand is whether the plaintiff has complied or should be required to comply with the proviso of Section 101(a)(4), which states that any member of a labor organization may be required to exhaust reasonable hearing procedures within such organization, but not to exceed a four-month lapse of time, before instituting proceedings against it.

The judgment of the court below will be vacated and the cause will be remanded for further proceedings in accordance with this opinion.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,328

HENRY HUGHES, *Appellant*,

v.

LOCAL NO. 11 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO

On Appeal from the United States District Court for the District of New Jersey

Present: BIGGS, *Chief Judge*, and GOODRICH and FORMAN, *Circuit Judges*.

Judgment

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby vacated, and the cause remanded for further proceedings in accordance with the opinion of this Court. Costs to appellant.

Attest:

IDA O. CRESKOFF
Clerk

March 9, 1961

Received & Filed
Mar 9 1961
Ida O. Creskoff
Clerk

Office Supreme Court, U.S.
FILED
JAMES P. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 211

LOCAL NO. 11 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,

Petitioner,

v.

HENRY HUGHES,

Respondent.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOHN J. BRACKEN,
Counsel for Respondent,
786 Broad Street,
Newark, New Jersey.

Adams Press Corp. — 110

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ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The defendant union in this case has presented this Court with what it alleges is a question under Section 3(o) of the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 520, 29 U. S. C. §402(o) (hereinafter called the Act). The alleged question refers to plaintiff as an "applicant" for "admission" to the union. Those words or their synonyms are used twenty-four times on 16 pages of a nineteen-page brief. The jurisdiction of this court is invoked because of the thorny question of who by law must be admitted to membership in labor organizations, a question which the Act answered in terms but not, as its history shows, in intent. A "vast volume of litigation" is threatened by defendant unless this Court uses this case as a means of deciding what union "admission" means.

The only problem with defendant's presentation of such a question is that both the District Court (which sided with defendant) and the Court of Appeals (which held against defendant) found as a fact that such a question was not involved. The District Court stated but did not controvert plaintiff's claim to membership within the meaning of the Act. It denied him relief because it held the Act inapplicable to matters such as "the right to transfer to or from an organization." In other words, not "admission" but "transfer" was the question (Pet. A-3).

The Court of Appeals agreed that this matter of "transfer" was the question. Preparatory to such agreement, it found as a fact that plaintiff "is a member in good standing of the International * * * [and] also a member in good standing of Local 489 * * *" (Pet. A-5 and 6). Continuing, the Court of Appeals agreed with the District Court (Pet. A-11 and 12) that transfer in this case was a matter internal to the organization. Its disagreement with the District Court lay in its different construction of the constitution of the defendant's international union.

Thus what defendant really seeks is to have this Court construe its own constitution more to its liking than the construction secured by it from the Court of Appeals. This, it is submitted, is not a proper use of the remedy of certiorari.

Even granting, for argument's sake, that the question of "admission" is open, the answer must be sought first in the same constitution. Defendant does not dare deny that plaintiff is a member within Representative Landrum's definition (pp. 11 and 12 of Petitioner's brief, and also Pet. A-14), especially when read with the provisions of the union constitution (Pet. A-11 and 12). In addition, Article II, Section 1 of that constitution reads as follows:

"Sec. 1. This organization shall consist of an unlimited number of bridge, structural, ornamental, shopmen and reinforced concrete iron workers', riggers', machinery movers', stone derrickmen's and pile drivers' local unions, and the various members thereof, and it shall not dissolve so long as any two local unions oppose such dissolution." (Plt's App. 11a)

The "transfer" plaintiff seeks in this action is a necessary prerequisite to enjoying the rights guaranteed by Section 102 of the Act. The transfer he seeks presumes, by its very terms, that plaintiff is already a member. The transfer form contained in the international constitution and submitted to both courts below reads as follows:

PERMIT PENDING TRANSFER No.

Name of Member .....

Membership No. ..... of Local Union No. ..... hereby makes application for transfer Membership to Local Union No. ..... this ..... day of ....., 19 ....

Signature of Local Union Officer .....

Position: Business Agent—Financial Secretary. (Indicate which position you hold)

(Seal of Local Union)

(To be filled in when application for transfer is made, and sent to Local Union of Member) (Plt's App. 19a).

In short, this is a case of "transfer" not of "admission." As such it is not within the rules of this Court for the granting of certiorari.

Respectfully submitted,

JOHN J. BRACKEN,
Counsel for Respondent.